

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.08.2020

PRONOUNCED ON : 14.08.2020

CORAM

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Civil Miscellaneous Appeal No.1331 of 2016

(Heard through video conferencing)

1.D.Sumathi

2.D.Kamatchi

3.D.Kumar

4.D.Gopal (Minor)

Minor rep. By Mother and

Natural friend D.Sumathi

all residing at No.27-B,

Kannadasan Nagar,

2nd Street, Ramapuram,

Chennai – 600 089.

Appellants

vs.

1.S.Gokulnivas,

No.289, Venkataraman Nagar,

5th Main Road, Hasthinapuram,

Chennai – 600 044.

2.Reliance General Insurance Co.Ltd.,
'Rai' s Towers' 2nd Floor, No.2054, 2nd Avenue, Anna Nagar,
Chennai – 600 040. ... Respondents

Prayer:-This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 against the common judgment and decree in [M.C.O.P.No.5381](#) of 2011 dated 27.02.2015 on the file of the learned V Judge, Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellants :[Mr.K.A.Ravindran](#) for
[Mr.A.Shanmugaraj](#)
For R.1 :Set Exparte
For R.2 :[Mr.S.Arunkumar](#)

JUDGMENT

The appellants are the claimants in the motor accident claim petition for compensation. On 03/04/2011, Thiru.Duraikannu while travelling in the motor cycle as pillion rider and driven by his son Venkatesan, near Bhimanthangal check post, on Chennai to Bangalore Highways, a TATA Indica Car bearing registration No.TN 22 BE 6175 coming on the wrong side of the road knocked the motorcycle. Duraikannu and his son Venkatesan died in the hospital. The claimants

who are the wife and children of Duraikannu filed two claim petitions one for the loss of Duraikannu (MCOP No.5381/2011) and another for the loss of Venkatesan (MCOP No.5396/2011). The Tribunal conducted joint trial and passed common judgement on 27/02/2015. A sum of Rs.7,42,000/- was awarded in MCOP No.5381 of 2011 and a sum of Rs.16,20,000/- in MCOP No.5396 of 2011 was awarded by the Tribunal.

2.The appeal under consideration is for enhancement of compensation awarded by the Tribunal in MCOP No.5381 of 2011 filed for the loss of Duraikannu.

3.The contention in the appeal is that, the Tribunal erred in fixing the monthly income of the deceased Duraikannu, as low as Rs.6,500/- pm. The evidence of PW-4 and the salary certificate Ex P-6 not considered by the Tribunal. The avocation and income of the deceased is spoken by PW-4. The witnesses have deposed that the deceased was working as Mason under the construction company of PW-4 and earning

approximately Rs.15,000/- pm.

4. The deceased left behind his wife, widowed daughter, two sons (aged 21 and 14 years). The elder son Venkatesan aged 28 years also a victim in the said road accident. Therefore, for loss of two adult earning male members of the family, the compensation of Rs.50,000/- each given under the heads loss of consortium/loss of love and affection is abysmally low. Hence, enhancement of compensation from Rs.7,42,000/- to Rs.16,89,500/- is sought.

5. The claimants are wife aged 47 years, widowed daughter with two female children and two sons aged 21 and 14 years. The deceased at the time of accident was aged about 55 years and working as Mason. The legal heir certificate – Ex.P-4 and the evidence of PW-4 proves these facts. About the income of the deceased, the salary certificate and the evidence of PW-4 indicate that the deceased was paid Rs.500/- per day, as wages. The deceased being a skilled person, fixation of notional wage

of Rs.6,500/- pm is not reasonable and fair. At the age of 55 years, the reasonable wage of a Mason in a city like Chennai during the year 2011 was not less than Rs.350/- per day. Therefore, fixation of notional income at the rate of Rs.6,500/- is contrary to the evidence of PW-4 and the salary certificate Ex P-6. There is no reason to believe that PW-4 for extraneous reason deposed in favour of the claimants. Hence, the award under this head requires interference.

6.For future prospects, the Tribunal has awarded 15% . In ***National Insurance Co.Ltd., Vs. Pranay Sethi and others (2017 (2) TN MAC 609 (SC))*** case, the Hon'ble Supreme Court has fixed only 10% as future prospects for the victims between 50 to 60 years. Here again, the Tribunal award under this head requires interference. Likewise, the compensation awarded under the other non conventional heads also requires modification in view of the number of dependants and their ages.

7.This Court finds force in the submission of the learned counsel

for the appellants. Hence, the award of the Tribunal passed in MCOP No.5381 of 2011 is modified as under:-

(i) Loss of dependency:

The monthly income of the deceased Duraikannu is fixed at Rs.9,000/- based on the evidence of PW-4 and the salary certificate Ex.P-6. For future prospects 10% of the income is added. Since, more than 4 persons were depending on the deceased, 1/4th of his income is deducted towards personal expenditure. The deceased was 55 years at the time of his death. Hence, multiplier 9 is applied. Thus, the loss of dependency in terms of money is fixed as **(Rs.9000 + Rs.900) x $\frac{3}{4}$ x 12 x 9 = Rs.8,01,900/-**.

(ii) Conventional heads:

<i>Under the Heads</i>	<i>Amount</i>
Loss of consortium	Rs.50,000/- (for 1 st claimant)
Loss of Love and Affection	Rs.75,000/- (each Rs.25,000/- for claimants 2 to 4)
Loss of Estate	Rs.15,000/-
Funeral Expenses	Rs.15,000/-
Total	Rs.1,55,000/-

The total compensation is Rs.8,01,900/- + Rs.1,55,000 =

Rs.9,56,900/-

8. In the result, the compensation is enhanced from Rs.7,42,000/- to Rs.9,56,900/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent Insurance Company is directed to deposit the enhanced award amount with interest as stated above within a period of eight weeks from the date of receipt of a copy of this judgment.

9. The award amount shall be distributed proportionally with interest among the claimants as under:-

1st claimant: (Rs.4,50,000 + Rs.50,000) = Rs.5,00,000/-

2nd claimant: (Rs 1,50,000 + Rs.25,000) = Rs.1,75,000/-

3rd claimant (Rs 81,900 + Rs.25,000) = Rs.1,06,900/-

4th claimant (Rs 1,50,000 + Rs.25,000) = Rs.1,75,000/-

The ***Civil Miscellaneous Appeal is allowed*** as stated above with

costs.

14.08.2020

jbm

Index: Yes/No

Speaking order/Non speaking order

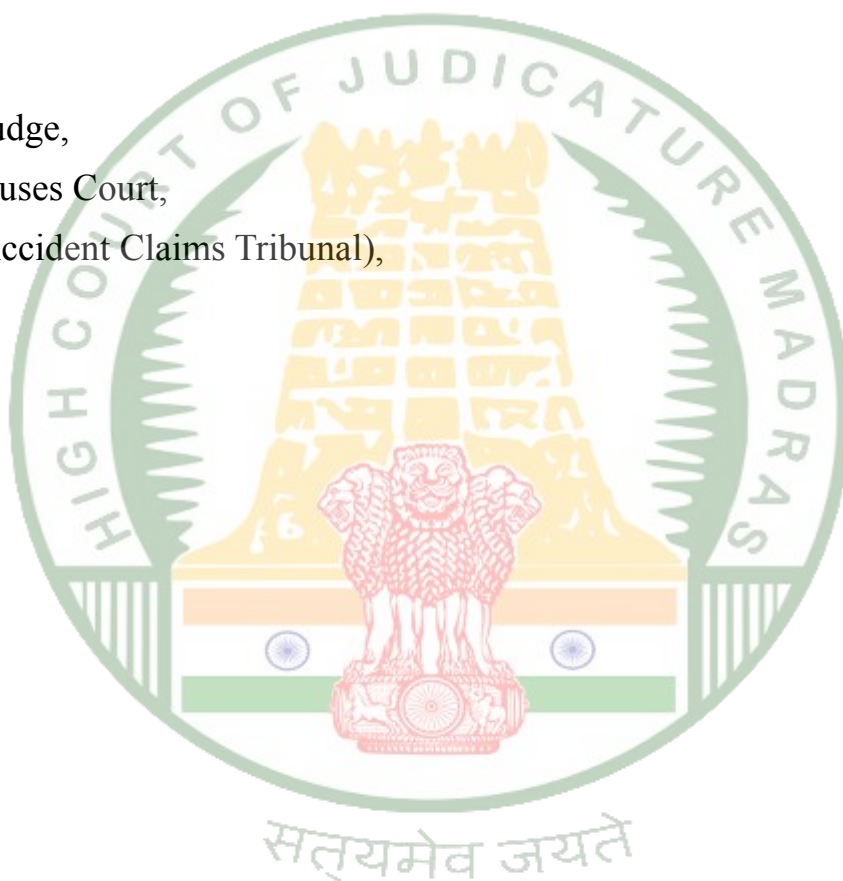
To

The V Judge,

Small Causes Court,

(Motor Accident Claims Tribunal),

Chennai.



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C.M.A.No.1331 of 2016

G.JAYACHANDRAN.J.,

jbm



Judgment made in
C.M.A.No.1331 of 2016

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